

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM-92

December 1, 1995

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Revised Rules Governing Filing and Service of Papers

On November 2, 1995, the Board promulgated the attached revisions to the Board's Rules and Regulations regarding the filing and service of papers. These rule changes, which are effective December 8, 1995, permit the use of facsimile transmission for the filing of specified documents, allow the Board to serve certain documents by regular mail and, generally, reorganize and modify portions of the rules pertaining to filing and service.

One of the major revisions to the rules is the provision that parties may file unfair labor practice charges, representation petitions, and objections to elections by facsimile transmission.¹ The revised rules further provide that a person filing one of these three documents by facsimile transmission must also file an original for the Agency's records, although failure to do so will not affect the validity of the filing, if otherwise proper. The Agency's receipt of the document transmitted by facsimile constitutes filing with the Agency.² The rules specifically provide that a failure to file or serve a document timely will not be excused on the basis that the receiving machine was off-line or busy or unavailable for any other reason. Moreover, documents filed by facsimile transmission must be served on all parties in the same, or more expeditious, manner.

The rules continue to require that complaints, compliance specifications, amendments to these documents, final orders of the Board in unfair labor practice cases, administrative law judges' decisions, and

¹ The revised rules continue to permit facsimile transmissions of requests for extensions of time and, with the advanced approval of the receiving office, all other documents with the exception of those in which facsimile transmissions are prohibited by the rules.

² These documents, when filed by facsimile transmission, must be received on or before the official closing time of the Region on the last day of the time limit, if any, for such filing. See Section 102.111(b) of the Board's Rules and Regulations.

subpoenas be served upon all parties either personally, by registered or certified mail, by telegraph, or by leaving a copy at the principal office or place of business of the person required to be served. The rules do not require, however, that a return receipt be obtained. Accordingly, since the U.S. Postal Service charges \$1.10 for a return receipt, Regions should not request a return receipt for the certified mail delivery to either charging parties, parties to the contract or parties in interest of complaints, compliance specifications, and amendments thereto. Return receipts must be requested when complaints, compliance specifications and amendments thereto sent to respondents, as well as all subpoenas, are served by certified mail.³ Regions should continue to serve attorneys or representatives only by regular mail.

With the exception of the documents set forth in the preceding paragraph, the Agency may serve documents by other methods, including regular mail. With respect to unfair labor practice charges, Section 102.14(b) of the revised rules provides that “[t]he Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail on the person against whom the charge is made.” (Emphasis added).⁴ The rules further provide that the Regions may, with the permission of the person receiving the charge, serve the charge by facsimile transmission. In such case, “the receipt printed upon the Agency’s copy by the Agency’s own facsimile machine, showing the phone number to which the charge was transmitted and the date and time of receipt shall be proof of service of the same.” (Section 102.14(b)).⁵

When the Region serves a copy of the charge to the charged party by regular mail, it is important that a record be maintained of such service since it may be necessary at a hearing to prove service of the charge. Therefore, Regions should record service to the charged party on Form NLRB 877, listing the name and address to which the charge was mailed, the date of mailing, and the name of the individual performing the mailing. This form must also be modified to state that service was by regular mail. It should be placed in the investigative file so that the Board agent assigned to the investigation can ensure that the form has been

³ In accordance with Memorandum 80-29, registered mail should be used only when absolutely required.

⁴ Section 102.14(a) provides that charging parties may also serve an unfair labor practice charge, inter alia, by regular mail or, with the permission of the person receiving the charge, by facsimile transmission.

⁵ If the Region’s facsimile machine does not produce such a receipt of a document served by the Region please advise your Assistant General Counsel. Such notification should also be provided if the facsimile machine does not record the time and date that a facsimile transmission is received by the Region

completed. Although not self-authenticating, this form could be used, if necessary, to prove service of the charge.

While certified mail is to be used routinely only for service of the documents as enumerated above, Regional Directors retain the discretion to depart from the routine practice. Thus, in the face of special circumstances, Regional Directors may utilize certified mail for documents other than those specifically enumerated above.

If you have any questions concerning this memorandum, please contact me or your Assistant General Counsel.

B.A.B.

Attachment

cc: NLRBU

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